

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Presubscribed Interexchange Carrier Change Charges) CC Docket No. 02-53

AT&T FURTHER REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits this reply to comments filed by other parties in response to the Commission's *Further NPRM* in this proceeding regarding the Commission's regulation of presubscribed interexchange carrier ("PIC") change charges assessed by local exchange carriers ("LECs").¹

AT&T has shown in its Further Comments (at 1-3), as well as in earlier filings in this proceeding,² that whatever justification may have existed when the \$5.00 "safe harbor" was adopted by the Commission in 1984, those predicates have long since become invalid and the safe harbor rate now seriously disserves the public interest in sustaining vigorous competition in long distance markets. Comments submitted in

¹ *Presubscribed Interexchange Carrier Change Charges*, CC Docket No. 02-53, Further Notice of Proposed Rulemaking, FCC 04-96 (rel. April 23, 2004), 60 FR 29,913 (May 26, 2004) ("*Further NPRM*") ¶ 12. In addition to those filed by AT&T, comments in response to the *Further NPRM* were filed by the Association for Communications Technology Professionals in Higher Education ("ACUTA"), BellSouth Corporation ("BellSouth"), Cincinnati Bell Telephone Company ("CBT"), MCI, the National Association of State Utility Consumer Advocates ("NASUCA"), the National Exchange Carrier Association, National Telecommunications Cooperative Association and the Organization for the Protection and Advancement of Small Telephone Companies, filing jointly ("Joint Commenters"), the New Jersey Division of Rate Payer Advocate ("New Jersey"), SBC Corporation ("SBC"), Sprint Corporation ("Sprint") and the Verizon Telephone Companies ("Verizon").

² See AT&T Comments, filed June 14, 2002, and AT&T Reply Comments, filed July 1, 2002, in *Presubscribed Interexchange Carrier Change Charges*, CC Docket No. 02-53, CCB/CPD File No. 01-12 and RM-1031, Order and Notice of Proposed Rulemaking, FCC 04-96 (rel. March 20 2002), 67 FR 34,665 (May 15, 2004) ("*NPRM*").

response to the *Further NPRM* both by other interexchange carriers (“IXCs”) and by representatives of consumers upon whom the PIC change charge is assessed in the first instance again confirm that the present safe harbor is insupportable as a matter of sound regulatory policy. Like AT&T, NASUCA recognizes (at 3) that the current non-cost based safe harbor rate provides “a subsidy of the ILECs bottom line” that is inimical to the interests of competition and consumer welfare. NASUCA therefore concludes that “the need for the Commission to reduce or eliminate the safe harbor has grown” since this rulemaking was initiated two years ago, and states that “[a]fter twenty years of allowing customers to be overcharged for changing long distance carriers, it is well past time for this Commission to correct that error.”³ Similarly, MCI states (at 1) that the current safe harbor rate levels “are well above cost, and have a deleterious effect on customer choice and competition.”

Once again in this further comment round, just as in prior phases of this proceeding, LECs and the organizations that represent their interests deny that the current safe harbor rate and unitary rate structure is unreasonable.⁴ Significantly, however, the record is almost entirely bereft of reliable cost information to support the reasonableness of the safe harbor level despite the Commission’s repeated requests that LECs – the sole parties with access to such information – come forward with such data.⁵ As AT&T

³ NASUCA at 2; *accord*, ACUTA at 1-2 (urging Commission to “significantly reduce” the current safe harbor).

⁴ See BellSouth at 4; CBT at 1-3; Joint Commenters at 3, SBC at 2; Sprint at 2; Verizon at 1-3.

⁵ See *Further NPRM*, ¶¶ 2, 9; *NPRM*, ¶ 20 (stating “[c]ommenters should provide cost evidence supporting any safe harbor proposed”).

showed in its Further Comments (at 5), in the absence of such a record it is impossible for the Commission to conclude the present safe harbor is just and reasonable.

BellSouth, which implemented an increase in its PIC change charge in 2003, simply relies on the tariff support for that filing.⁶ It does not even address, much less rebut, the serious questions regarding the reasonableness of BellSouth's cost support for that rate increase that AT&T and MCI had raised at the time the tariff change was allowed to take effect without any Commission decision on the merits of those petitions.⁷ Moreover, BellSouth has not provided any information to allow interested parties and the Commission to determine whether BellSouth's tariffed charge double-recovers for costs recouped under contract through the Customer Account Records Exchange ("CARE") process.⁸

Verizon, the only other LEC that attempts to cost justify the present safe harbor level, purports to show (at 6 and Attachment B) that its costs for processing PIC changes range from \$4.84 in its western service area to \$5.47 in its eastern service area. Verizon's filing also does not provide a sufficient showing that these purported costs are based on a forward looking incremental cost methodology.⁹ As AT&T showed in its

⁶ See BellSouth at 1-2.

⁷ See AT&T Further Comments at 5-6; AT&T Petition to Suspend and Investigate BellSouth Transmittal No. 746, filed October 21, 2003; MCI Petition to Reject or, In the Alternative, Suspend and Investigate, filed October 21, 2003. BellSouth Transmittal No. 746; *Protested Tariff Transmittals Actions Taken*, 18 FCC Rcd 23137 (2003).

⁸ See AT&T Further Comments at 5. CBT confirms (at 2) that in many instances "the long distance carrier submits the order to the [LEC] on the customer's behalf via the [CARE] system," but then fails to address the extent to which PIC change costs are recovered under contracted charges for the CARE process.

⁹ For example, a significant portion of Verizon's cost is associated with computer investments. Workpaper 4 shows the annual expense associated with various types of computer systems and

(footnote continued on following page)

Further Comments (at 5 and n.15), reliance on such a costing methodology is imperative for the Commission to determine the reasonableness of a PIC change charge. Moreover, Verizon has explicitly included PIC freeze-related costs in its calculation of the costs of its PIC change charges. As AT&T (at 7-8) and MCI (at 3-6) have shown, PIC freeze-related costs are not properly a part of the PIC change process, and including those amounts in the calculation of PIC change charge costs only serves to inflate the computation. If any such costs are to be recovered, they should not be subsidized by other end users or, indirectly, by interexchange carriers that may reimburse subscribers for PIC change charges. Rather, the PIC freeze should be assessed as a separate charge directly on the cost-causative end users who have opted for that feature.

But even if the costs claimed by BellSouth and Verizon for their PIC change charges were otherwise appropriate, the Commission cannot simply adopt some variant of those purported costs as the basis for any new safe harbor rate. As AT&T noted in its Further Comments (at 6), the present record does not provide any basis for the Commission to conclude that BellSouth or Verizon are representative of the costs incurred by other LECs in implementing PIC changes. Indeed, even SBC (at 3) concedes that “BellSouth’s PIC-change costs are not typical for similarly situated LECs and thus should not be used as a basis for setting the PIC-change charge safe harbor.” Similarly, CBT states (at 5) that “the BellSouth 2002 cost study should *not* be used as a basis for

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cites “external vendor analysis” as the source of these figures, but there is no any way of determining whether these costs were calculated using a forward looking, incremental cost methodology. Nor is this the only aspect in which Verizon’s cost material is a “black box”; several workpapers show investment related cost factors, but it is not clear what the investments are to which these factors are applied.

setting a PIC change charge safe harbor(s),” due to purported differences in economies of scope and scale between BellSouth and other local carriers (emphasis in original). On this record, the Commission cannot conclude that the limited LEC cost information that has been adduced is sufficient to prescribe new safe harbor rates for all LECs.¹⁰

The record does reflect, however, that it is both desirable and feasible for the Commission to require that LECs adopt a bifurcated rate structure for PIC change charges to reflect cost differences between manual processing of carrier changes and mechanized (also referred to as electronic) processing of those transactions. The latter form of change request is submitted to the LECs by other carriers, using the CARE process, on behalf of end users who have authorized and verified those transactions in accordance with procedures established by the Commission.¹¹ Both AT&T (at 6-8) and MCI (at 2-5) showed in their further comments that such a bifurcated rate structure would obviate the subsidization of manual PIC changes (largely, but not solely, attributable to

¹⁰ BellSouth’s additional proposal (at 2) that the PIC change charge be made subject to the Commission’s price cap regulation of ILECs should be rejected. As AT&T showed (at 6-7) in its Reply Comments filed in this proceeding in 2002, the Commission originally excluded PIC change charges from the price cap regime because, unlike virtually all other access charges that are assessed on carriers, the PIC change charge “represent[s] a direct charge to end users” and, thus, was “very different” from other access charges. *See Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6810 (1990), *recon.* 6 FCC Rcd 2637, 2715 (1991). BellSouth’s observations that PIC changes have become commonplace and allegedly “are not dramatically different from other service changes” do not address the Commission’s original distinction and provide no basis for the Commission to alter its prior decision. As AT&T also showed in its 2002 Comments, incorporating the PIC change charge in the LECs’ price caps would allow those carriers to engage in strategic pricing tactics by dramatically increasing PIC change charges and making offsetting adjustments in other access rate elements.

PIC change charges also are not subject to competitive marketplace forces because customers typically do not take those rates into account when selecting a local carrier. Accordingly, the Commission’s prescriptions on PIC change charges should be applied to competitive, as well as incumbent, local carriers. *See AT&T Further Comments at 2 n.6; accord, MCI at 8-9.*

¹¹ See 47 C.F.R. § 64.1100 *et seq.*

PIC freezes) produced by the current unitary rate structure.¹² Notably, BellSouth in its further comments (at 3-4) agrees that “there is ample cost basis” to support restructuring the current rates into separate mechanized and manual charges. While other LECs oppose adoption of this bifurcated rate structure, claiming that the resultant charges would not decrease (or would even increase), none has provided any evidence to substantiate their bald assertions.¹³

The further comments of other parties also confirm AT&T’s showing (at 9) that the Commission should continue the current industry practice under which PIC change charges are assessed in the first instance on the end users, whether the changes are transmitted to LECs by interexchange carriers on the end users’ behalf or submitted by those end users directly to LECs. As noted above, in the first of these scenarios the long distance carrier merely acts as the authorized agent for the end user, and in both of these alternatives it is the end user who is the cost-causative customer in the carrier change. As CBT correctly points out (at 2), in this respect the PIC change is no different from

¹² Some LECs -- typically, smaller carriers -- have failed to adopt mechanized means for implementing PIC changes, and process all such change requests manually. Both AT&T (at 7 n.19) and MCI (at 6) showed in their further comments that the current safe harbor provides insufficient economic incentives for those local carriers to adopt more efficient processing methods, and that to provide appropriate incentives for process improvements the PIC change fees for those LECs should be capped at the rate which would prevail for mechanized processing. The Joint Commenters, which represent those smaller local carriers, assert (at 2) that the current safe harbor should be maintained because the “average demand” for monthly PIC changes is extremely low. However, the Joint Commenters calculation is skewed because it is based on dividing the number of PIC changes among NECA’s traffic sensitive pool members by the total membership of the pool. Many of the smallest independent LECs used in the denominator of this equation have exceptionally few lines, but that methodology grants them equal weight with carriers that process a more substantial number of PIC changes.

¹³ See CBT at 3; SBC at 6-7; Sprint at 3.

“similar customer-initiated transactions, [and] the subscriber should pay for the services performed by the [LEC].”¹⁴

CONCLUSION

For the reasons stated above and in AT&T’s prior filings in this proceeding, the Commission should eliminate the current \$5.00 “safe harbor” for PIC change charges. The Commission should require LECs (including both incumbent and competitive carriers) to file forward-looking incremental cost-based rates, bifurcated for electronic and manual processing, or in the alternative should mandate new safe harbors based on that bifurcated structure. Moreover, whichever alternative the Commission adopts, it should require LECs to eliminate from their PIC change charges all costs associated with marketing of LEC services or PIC freezes, but permit those carriers to recover their costs associated with PIC freezes through a separate charge assessed on end users.

Respectfully submitted,

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June 25, 2004

¹⁴ As MCI also notes (at 9), assessing the PIC change charge directly on long distance carriers would create no additional incentives for them to adopt mechanized PIC change submission processes, because most such carriers have already implemented those procedures.

CERTIFICATE OF SERVICE

I, Tracy Lea Rudnicki, do hereby certify that on this 25th day of June 2004, a copy of the foregoing "AT&T Reply Comments" was served by U.S. first class mail, postage prepaid, on the parties listed below.

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